

Section 8 Smoking and Tobacco Products

8.0 Definitions: Smoking shall mean having in possession or control any lighted cigar, cigarette, e-cigarette, other lighted tobacco substance in any form and **any nicotine delivery product or device**.

E-cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured or marketed and sold as e-cigarettes, e-cigars, e-pipes or under any other product name.

Health Care Institution: Any entity, person, or group of persons that provides health care services and employs health care providers subject to licensing under G.L. c. 112, §§ 1, et seq., or a retail establishment or business that provides pharmaceutical goods and services and is subject to 247 CMR 6.00. Such persons and entities shall include, but not be limited to, hospitals, clinics, urgent care facilities, health centers, drug stores, pharmacies, physician's offices, optician's or optometrist's offices, and dental offices.

Nicotine Delivery Product: Any article, item or product made wholly or in part of a tobacco substitute or containing nicotine. This definition shall not apply to any product which is approved or certified by a regulatory agency as a tobacco use cessation or other medical purpose product and which is marketed and sold exclusively for such purposes.

Retail Tobacco Store: As defined in G.L. c. 270, §22.

Tobacco Product: Any product which contains tobacco in any form, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff.

Self Service Display: A Self-Service Display is any display from which customers may select or make a tobacco product without access from an employee or store personnel.

8.0.1 The use of e-cigarettes is prohibited wherever smoking is prohibited per section 8 of the Wilmington Board of Health regulations.

8.2 No person shall smoke in any public elevator, supermarket, retail store, retail tobacco store, retail food store, restroom, or at any open meeting of a governmental body in the Town of Wilmington. No person shall smoke in any interior common area of any multiple dwelling unit.

8.3 No person shall smoke in any public building, museum, library, taxi, train, public transportation including platforms, public areas of all buildings which includes but is not limited to banks, financial institutions, commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity, group child care center, day care center, or waiting area of a health care facility, except in any private area which has been specifically designated as a smoking area for employees at the discretion of the manager of the building. No person shall smoke within a school building, within a school facility, on a school bus or on school grounds.

8.4 Smoking is prohibited in any restaurant or other such establishment open to the general public that sells food products. The operator of any food establishment shall conspicuously post such notice or signs indicating that smoking is prohibited therein. Any person who smokes in a food establishment shall be subject to a fine of \$50.00. Any operator of any food establishment who does not comply with this provision shall be subject to a fine of \$50.00.

8.5 In the case of hotels, motels and inns, a minimum of 75% of the total number of guestrooms shall be designated as non-smoking. The rooms so designated will have signs posted indicating the smoking is prohibited therein. Room designations shall be made and provided to the Board of Health at the time permits are issued. No changes in room designation can take place without prior approval of the Board of Health.

8.6 No person shall sell or offer for sale any tobacco product that has been removed from its original package or offer for sale any cigarette package that contains fewer than twenty (20) cigarettes.

8.7 No person shall sell any tobacco products, or nicotine delivery products, or give any such products, to any person under the age of 21 years. The minimum legal sales age in the Town of Wilmington is 21. The fine for the sale or gift of a tobacco product or nicotine delivery product to a person under the age of 21 shall be \$300.00 (see Section 8.22). Each retailer shall verify by means of valid government-issued photographic identification that each person purchasing tobacco is 21 years of age or older. No such verification is required for any person who reasonably appears to be 30 years of age or older.

8.8 Existing vending machines dispensing tobacco products shall be located in plain view and control of a responsible employee, and all such vending machines must be equipped with a lock-out device approved by the Board of Health. Sale of a tobacco product to a minor by means of a vending machine is punishable by a fine of \$300.00. A second offense within a two year period shall be punishable by removal of the tobacco vending machine(s) for a period of one (1) year. A third offense within the same two-year period shall be punishable by permanent removal of the tobacco vending machine. After the effective date of this regulation, any new installation of a vending machine dispensing tobacco products shall be prohibited.

8.9 In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously in any place which sells tobacco products by the operator thereof.

8.10 A separate notice shall be posted at all of the cash registers and on any vending machine such that it may be readily seen by a person standing at or approaching the cash register or vending machine. Such notice shall directly face the patrons and shall not be obstructed from view, and shall be in two contrasting colors, at least 48 square inches in area, and able to be read at a distance of five (5) feet. Such notice shall state that the sale of any tobacco product to persons under age 21 is illegal. The owner or other person in charge of a shop or other place used to sell nicotine delivery products shall also conspicuously post a sign stating that "The sale of nicotine delivery products to persons under 21 years of age is prohibited."

8.11 Self-service displays of tobacco products are prohibited. Displays of tobacco products, including humidors, must be under the direct supervision of an employee and may be located only in an area behind or above the sales counter or courtesy desk counter area. Walk-in humidors must be located immediately adjacent to the cash register so as to prevent access without age verification. A Commercial Roll-Your-Own (RYO) machine is a mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

The following shall apply to Commercial Roll-Your-Own ("RYO") machines:

8.11.1 A Commercial RYO machine must be operated from within a locked area or have a lockout device on the machine to be unlocked by a store employee. Commercial RYO machines can only be operated by a customer after they have been granted access (unlocking) by an employee or store personnel, otherwise they would be considered self-service and prohibited.

Customers must be 21 years of age or older to use the machine.

Customer access to the RYO area can only be made by providing a store employee with proper identification showing that the consumer is 21 years of age or older.

A store employee shall provide access to the locked RYO area or to the lockout device and provide instruction to the customer. The RYO area must be cleaned by store personnel only after every use and prior to use for the next customer. Cigarette product contact surfaces shall be cleaned with a disinfectant cleaner. Disposable clean collection boxes or bags must be used to collect product.

The fine for the violation of any of the above shall be \$100.00 for each violation, each day constituting a separate violation.

8.12 No person shall distribute tobacco products or other products containing tobacco free of charge.

8.13 No person shall sell, offer for sale, or display tobacco products within the Town of Wilmington, including sales by vending machine, without a valid tobacco sales permit issued by the Board of Health. This shall not apply to wholesale sales to retail establishments. (1/1/97)

8.13.1 No health care institution located in Wilmington shall sell or cause to be sold tobacco products or nicotine delivery products.

8.14 The fee for a tobacco sales permit shall be \$ 200.00. (1/23/06)

8.15 A tobacco sales permit shall not be transferable. (1/1/97)

8.16 Any tobacco sales permit shall expire at the end of the calendar year in which it was issued. (1/1/97)

8.17 Each retail location shall be required to obtain a separate tobacco sales permit. (1/1/97)

8.18 The tobacco sales permit shall be posted in a conspicuous place at the point of sale. (1/1/97)

8.19 A tobacco sales permit shall not be issued to persons under the age of eighteen. (1/1/97)

8.20 The fine for the sale of tobacco products without a tobacco sales permit shall be \$ 50.00. (1/1/97)

8.21 The Board of Health may revoke any tobacco sales permit for violation of these regulations. (1/1/97)

8.22 The penalties for violation of these tobacco regulations by a holder of a tobacco sales permit shall be according to the following table: (1/1/97)

First Violation:

Sale of tobacco to a person under 21 years of age	\$300.00
Other violation	50.00

Second Violation (within 12 months of the first violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00
Suspension of the tobacco sales permit for a period not to exceed 7 days	

Third and Subsequent Violation (within 12 months of any prior violation):

Sale of tobacco to a person under 21 years	\$300.00
Other violation	50.00

Suspension of a tobacco sales permit for a period of not less than 7 days and not to exceed one year.

8.23 Smoking and the use of any tobacco product(s), is hereby prohibited in Wilmington at town-owned playgrounds, parks, beaches, beach areas, recreational areas and facilities. The penalties for violation shall be \$50.00 for each violation. The Police Department, Board of Health Agent or it's designee shall enforce the regulation.